

JAN 29 2008

Paul Reinhart, Medicaid Director
Medical Services Administration
Michigan Department of Community Health
400 South Pine Street
P.O. Box 30479
Lansing, MI 48909-7979

Dear Mr. Reinhart:

Enclosed for your records is the Centers for Medicare and Medicaid Services (CMS) Region V final report entitled "Review of Nurse Aide Training and Testing Program and Expenditures for the State of Michigan" for the fiscal years of 2003, 2004 and 2005. The review has been assigned control number 05-FM-2006-MI-003.

The purpose of this review was to ensure that nurse aide training and testing costs claimed on the quarterly CMS 64 expenditure report were reasonable, appropriate and could be substantiated and also to ensure that the State provided appropriate oversight of the nurse aide training and competency evaluation programs within the State. Lastly, the review attempted to ensure that the State monitored the maintenance of the Nurse Aide Registry.

The CMS has updated the report to include the State's response to the findings identified in the report as well as final conclusions by CMS in light of the State's responses. Additionally, the report has been updated to reflect inaccuracies identified by the State.

We would like to thank you and your staff for your continued assistance. If you have any questions or concerns, please contact me or have a member of your staff contact Mary Ann McGuire, Accountant, of my staff, at (517) 487-8594.

Sincerely,



Hye Sun Lee
Acting Associate Regional Administrator
Division of Medicaid and Children's Health Operations

Enclosure

FINAL

Financial Management Report

REVIEW OF NURSE AIDE TRAINING AND TESTING PROGRAM AND
EXPENDITURES FOR THE STATE OF MICHIGAN

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH
LANSING, MICHIGAN

FOR THE FISCAL YEARS OF 2003, 2004 AND 2005



**DIVISION OF MEDICAID AND CHILDREN'S HEALTH
CENTERS FOR MEDICARE & MEDICAID SERVICES
CHICAGO REGIONAL OFFICE**

05-FM-2006-MI-003

EXECUTIVE SUMMARY

The Omnibus Budget Reconciliation Act (OBRA) of 1987 and 1990 requires any nurse aide employed in a nursing facility (LTC facility) to complete a State-approved training and competency evaluation program. The State of Michigan allows entities such as community colleges, hospitals, home health agencies, adult education programs and long term care facilities to offer their own nurse aide training programs. These training programs must be reviewed and approved by the State on a biennial basis. Costs incurred for training and evaluation of nurse aides are eligible for reimbursement from the Medicaid program as administrative costs.

When a nurse aide has successfully passed a competency evaluation program they are placed on a Nurse Aide Registry. OBRA instructs nursing facilities to query the State registry prior to hiring a certified nurse aide. The registry, which must meet the requirements stated in 42 CFR 483.156, is to be established and maintained by the State who in turn may contract the daily operation and maintenance of the registry to a non-state entity. Michigan's Nurse Aide Registry is maintained by an outside entity, Thomson Prometric.

CMS staff performed this review in order to obtain an understanding of the activities utilized within the State to monitor the nurse aide training and competency evaluation programs. This review also included ensuring that the reported costs associated with the nurse aide training and competency evaluation programs were accurate and could be substantiated. Additionally, CMS staff performed a limited review of the Nurse Aide Registry to ensure adherence to applicable regulations.

This review identified process weaknesses in several key areas. It was discovered that there were no controls in place to ensure that entities that were claiming costs for onsite nurse aide training programs had the necessary approval to conduct those onsite training programs. This procedural weakness allowed for an overpayment to two entities in the amount of \$61,441 (\$30,721 FFP). CMS identified that standard audit procedures performed on cost reports by the Office of Audit were not consistently performed and in one instance documentation in the audit file was not sufficient to support the audit procedures performed. The review also identified issues relating to the maintenance of the Nurse Aide Registry. According to Federal Regulations the State is not allowed to impose registration related fees on individuals listed in the registry. This review identified that individuals are being charged renewal fees to maintain their listing on the registry. Lastly, the State is not removing individual entries from the Nurse Aide registry when an individual has not performed nursing or nursing related services for a specified period of time, as specified in the regulations.

A. INTRODUCTION AND BACKGROUND

The Medicaid program, administered by the State of Michigan, is a joint Federal-State program in which the Federal government reimburses the State for a percentage of expenditures incurred during the operation of the Medicaid program. Medicaid reimburses States for the cost of providing direct services to Medicaid eligible beneficiaries and for the cost of administering the Medicaid program. Nurse aide training and competency evaluation program (NATCEP) costs are eligible to be claimed as Medicaid administrative costs. Staff from the Chicago Regional Office of the Centers for Medicare & Medicaid Services (CMS) performed a limited review of NATCEP's utilized within the State along with the reported expenditures for these programs. Additionally a limited review of the State's Nurse Aide Registry was performed.

Nurse Aide Training and Competency Evaluation Programs

OBRA requires any nurse aide employed in a nursing facility to complete a State-approved training and competency evaluation program. According to regulation 42 CFR 483.151, if a State does not choose to offer a NATCEP, the State must review and approve NATCEP's within the State. The review must ensure that the programs meet the requirements set out in 42 CFR 483.152 for nurse aide training (NAT) and 42 CFR 483.154 for competency evaluation programs (CEP).

Nurse Aide Training Programs can be offered at nursing facilities so long as the program has been approved by the State. If a nursing facility does not choose to offer an onsite training program, they can contract with other entities such as community colleges, adult education programs or other medical care facilities to conduct training for them. The Michigan Department of Community Health (MDCH), Bureau of Health Professions (BHP) Division is tasked with reviewing and approving NAT programs conducted throughout the State. This division is responsible for ensuring that all programs adhere to the regulations stated in 42 CFR 483.150. Monitoring activities are performed for each NAT program on a biennial basis to ensure compliance. If the NAT program is found to meet applicable regulations, the training facility is given approval to conduct their NAT program for 2 years. As documented in 42 CFR 183.151(b) (2) there are certain facilities (known as locked out facilities) that cannot operate an onsite NAT program. These are entities that have been subject to specific remedies such as:

- The assessment of a civil monetary penalty of not less than \$5,000 for deficiencies in nursing facility standards within the last 2 years;
- Being subject to denial of payment, involuntary transfer of residents or Medicaid participation termination;
- Being subject to an extended or partial extended survey within the last 2 years.

The BHP Division monitors these locked out facilities and maintains communication with them to ensure they are aware of the loss of their NAT programs. This Division is also responsible for the oversight of the CEP for nurse aides within the State. MDCH contracts with an outside entity to provide the CEP. This entity, Thomson Prometric, reviews applicants from State approved training programs, establishes and maintains test sites throughout the state and schedules applicants for the Nurse Aide Competency Evaluation. Upon completion of the competency evaluation Thomson issues the nurse aide certifications (CNA's). The BHP Division is responsible for monitoring the performance of Thomson Prometric to ensure they are adhering to applicable State and Federal Regulations.

State expenditures for NAT programs and CEP's are administrative costs and are matched at the 50% Federal Financial Participation Rate (42 CFR 483.158 and 42 CFR 433.15(b) (8)). Costs that are allowed for reimbursement may include the following:

- Facility training staff (salaries, fringes, payroll taxes)
- Nurse aide training consultants
- Training program supplies
- Training program transportation
- Outside contracted nurse aide training programs
- Nurse aide testing fees

Nurse aide expenditures incurred by LTC facilities are included in their annual cost reports which are submitted to the Long Term Care Reimbursement and Rate Setting Section (LTC-RARSS) of the Bureau of Medicaid Financial Management within the State of Michigan. The LTC-RARSS is responsible for monitoring the cost reports to ensure they are received timely and accurately. The cost report includes a worksheet (known as worksheet #8) which must be submitted by entities who have incurred NATCEP expenditures during the time period. This worksheet is utilized to document statistical information regarding costs incurred by the facility for NAT programs and CEP's. This information includes:

- The number of students training during the period
- The number of students testing during the period
- Type of training conducted (onsite or offsite)
- Total hours training staff incurred for conducting approved training
- Nurse aide student staff wages, benefits and payroll taxes
- Total inpatient days for the facility
- Medicaid and Medicare inpatient days for the facility

Upon receipt and review of the cost reports and applicable worksheet #8, the LTC-RARSS group calculates the amount to be included on the CMS-64 quarterly expenditure report. The total amount of expenditures reported by the entity for NAT programs and CEP's is reduced by the amount of the nurse aide salaries. This amount is then further reduced by the Medicaid utilization rate calculated for each facility. These amounts are tallied each quarter and forwarded to the MDCH Budget Office for inclusion on the CMS-64 quarterly expenditure report as administrative expenditures.

Nurse Aide Registry

When a nurse aide has successfully passed the CEP they are placed on a Nurse Aide Registry. Before an individual can be hired as a nurse aide, OBRA instructs nursing facilities to query the State registry to verify that the nurse aide has met the competency evaluation requirements and that the individual is in good standing on the registry. Nurse aides with validated findings of resident abuse, neglect and/or misappropriation of resident property are identified as such on the Registry and this status will remain on the registry indefinitely.

The registry, which must meet the requirements stated in 42 CFR 483.156, is to be established and maintained by the State who in turn may contract the daily operation and maintenance of the registry to a non-state entity, so long as the State maintains accountability for the overall operation and compliance of the registry. The Michigan Nurse Aide Registry is maintained by Thomson Prometric with State oversight provided by the BHP Division.

B. PURPOSE AND SCOPE

The objectives of this review were to:

- Ensure that nurse aide training and testing costs claimed on the quarterly CMS 64 expenditure report were reasonable, appropriate and could be substantiated
- Ensure the State provided appropriate oversight of the nurse aide training and testing program and adherence to applicable rules and regulations
- Ensure that the State monitored the maintenance of the Nurse Aide Registry and that it adhered to promulgated rules and regulations.

SCOPE AND METHODOLOGY

The review was performed on a selective basis and tests of appropriate records, controls, and operations were made to the extent deemed necessary. CMS staff reviewed the State's Medicaid provider manual as well as the State's accounting records for the specified years. Interviews were held with various State personnel to obtain an understanding of the reporting practices and procedures used by their respective departments as well as to obtain the documentation deemed necessary to meet the objectives of the review.

Interviews were conducted with individuals from the LTC-RARSS as well as the BHP Division. Upon completion of the interviews a random sample of expenditures reported on the quarterly CMS-64 was chosen. The sample consisted of 20 long term care facilities that submitted expenditures included on the CMS-64 from fiscal years 2003, 2004 and 2005. A summary of costs along with the applicable worksheet #8 information from the cost report was obtained for each entity to ensure these documents supported the amounts claimed on the CMS-64. For those entities which were conducting onsite NAT programs, a review of the applicable records located at the BHP was performed to ensure these entities were approved to conduct the onsite NAT program. A review of the same entities was performed to ensure they were not considered a "lock out" facility during the time the expenditures were incurred.

The LTC-RARSS group is responsible for receipt and processing of the cost reports. All cost reports are then forwarded to the Office of Audit who is responsible for performing various review procedures on the reports. CMS performed interviews with the State Office of Audit Department and obtained audit files, if available, for the LTC facilities in the sample. The audit files were reviewed to obtain assurance that the Office of Audit was accurately reviewing NAT program and CEP expenditures in order to substantiate costs reported. The review also attempted to ensure that the Office of Audit had procedures in place to identify any other issues that may exist in the costs reported by the LTC facilities.

CMS staff additionally reviewed instructions to nurse aides and nurse aide candidates issued by Thomson Prometric, the entity contracted to administer the CEP and the Nurse Aide Registry. The intent of the review was to identify direction provided to the nurse aides and potential nurse aides regarding the nurse aide training courses, competency evaluation testing and the Nurse Aide Registry.

C. FINDINGS AND RECOMMENDATIONS

NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAM APPROVAL

Cost reports are submitted by LTC facilities annually to the LTC-RARSS. The LTC-RARSS processes all cost reports and performs an initial review of each cost report and worksheet #8 to identify areas that may warrant additional audit work. Items reviewed may include large variances, salary reasonableness, as well as any items that appear unusual. When their review is complete, the LTC-RARSS representative completes an Audit Scope and Planning document which is forwarded to the Office of Audit. Upon receipt of the cost report and audit scope and planning documents the Office of Audit assigns an auditor to perform a review of the information.

Utilizing the sample selected, CMS performed a review of the process described above. During the review it was discovered that there were two entities that had submitted administrative payroll costs of \$61,441 for onsite nurse aide training. These costs are not allowable as administrative costs because the two entities did not have the necessary State approval to conduct the training sessions. Additionally, these costs do not meet the definition of allowable costs of providing direct services and cannot be claimed as services costs. This issue was not identified by the LTC-RARSS or the Office of Audit. Upon further review by CMS staff it was discovered that neither the LTC-RARSS nor the Office of Audit had procedures in place to ensure that an entities NAT program had the necessary State approval when submitting onsite nurse aide training costs.

Finding #1

Neither the LTC-RARSS nor the Office of Audit have procedures in place to review for State approval to conduct onsite nurse aide training courses by entities who are submitting costs related to onsite training.

Recommendation

We recommend that the LTC-RARSS implement procedures to verify that entities who are submitting costs related to onsite NAT have State approval to conduct the onsite training programs.

DCH Response

The Department concurs with the finding and will implement procedures to verify that entities who are submitting costs related to onsite NAT have State approval to conduct onsite training programs. The Department's database of approved schools is in the process of being redone, once completed the program information will be available through the same system in use for health care professionals.

CMS Response

CMS finds the States response acceptable.

Finding #2

Total costs of \$61,441 were submitted by entities for onsite training related costs that did not have State approval to conduct onsite nurse aide training programs.

Recommendation

We recommend that the State make a decreasing adjustment on the next quarterly CMS-64 expenditure report in the amount of \$61,441 (\$30,721 FFP).

DCH Response

The Department concurs with the finding that onsite nurse aide training was claimed inappropriately; however, it has been determined that the costs at one facility were actually allowable in-service training.

The Department has conducted follow up related to one of the entities that claimed onsite training related costs that did not have State approval to conduct the onsite training program. Both the entity's management and the cost report preparer have stated that the reported trainer staff costs claimed on the cost report was actually facility staff conducting in-service training to the facility's nurse aide. In-service costs are an allowable routine cost that should be included in the facility's reimbursement rate. In these situations where the entity's reimbursement rate is below the various reimbursement limitations, the Department could reopen each reporting period's audits and reclassify these costs into routine. The resulting impact would be to decrease the nurse aide training and testing claim on the CMS 64 Report and increase the grant line amount at a higher federal funding participation rate. For fiscal year 2003 the additional federal grant claim will be \$15,329 (\$8,585).

CMS Response

CMS maintains its recommendation that the State make the necessary decreasing adjustment on the CMS-64 in the amount of \$61,441 (\$30,721 FFP). Upon submittal of documentation to substantiate that the expenditures were allowable, the amounts may be reclaimed as appropriate.

AUDIT REVIEW PROCEDURES

The Office of Audit has four regional offices within the State. Each regional office is responsible for performing reviews of cost reports for entities within their respective regions. When the information is received from the LTC-RARSS, the Regional Audit Manager is responsible for determining the level of audit work to be performed on each cost report. The level of audit work may include a full scope – on site review, a limited-

onsite review or a desk review. The review recommendation is then approved by the Office of Audit Director.

During the review of the audit files for the sampled entities CMS attempted to ensure that amounts reported on the cost report worksheet #8 were in agreement with the entities financial statement as well as in the actual expenditure section of the cost report. This review identified that audit procedures performed did not appear to be consistent and in one instance insufficient documentation was maintained in the audit file.

There were LTC facilities who documented, on their worksheet #8, that individuals had taken a competency evaluation test during the reporting period; however these facilities did not include any applicable costs on the worksheet. In some instances the Office of Audit identified and researched this issue while at other times the issue was not identified, or it was identified but no research was performed. While it is possible that this was simply an oversight on the part of the nursing facility, it may be indicative of other errors. Specifically, all costs relating to NATCEP are to be segregated and identified on worksheet #8. These costs are then deducted from the Medicaid Services claim and included on the Medicaid Administrative Claim and allowed a federal matching rate of 50%. If the costs are not correctly identified on the worksheet #8, they would inappropriately remain in the facility costs claimed as Medicaid Services.

During the review it was also noted that one entity had reported total NATCEP costs higher than that substantiated in the audit file. The Office of Audit reviewer obtained supporting documentation for a portion of costs reported via the entities worksheet #8, and noted that documentation was missing for the remainder of the costs. The audit file did not document any further research into this missing documentation nor a conclusion as to the allowability of the remaining costs. During our review of the audit file, we were unable to determine if the costs on the worksheet #8 were accurate or overstated as the documentation in the audit file was insufficient.

Finding #3

The scope and coverage of audit procedures performed on NATCEP costs is not consistent and the documentation contained in the audit files was not always sufficient to determine if claimed costs were accurate.

Recommendation

We recommend that controls be implemented to assure that standard audit procedures are performed consistently among Office of Audit staff and that the audit files contain sufficient documentation to support audit procedures and findings.

DCH Response

The Office of Audit believes that sufficient controls are in place to assure standard audit procedures are performed consistently among Office of Audit staff and that the audit files contain sufficient documentation to support audit procedures and findings.

The one instance relating to the lack of documentation referenced in the audit report relates to a chain facility in which the worksheet #8 expenditures were not scoped for audit review. Prior to the start of an audit, a standard audit confirmation letter which includes requests for documentation that may or may not be scoped for audit review for every cost report is mailed to the provider. At the beginning of the audit, the auditor reviews the provided information and includes the information in the appropriate section of the audit file. Since some of the facilities worksheet #8 costs were not part of the audit scope, the auditor included the documentation in the audit file for informational purposes only without audit review. Had the worksheet #8 costs been part of the audit scope, a detailed review of the costs would have been made by the auditor assigned to the audit.

CMS Response

CMS accepts the explanation given by the State. CMS would suggest that the impact of potential problems identified during an audit should be considered regardless of audit scope. Should it be determined that identified issues may be indicative of larger systematic problems within an entity's reporting structure then revision of the audit scope may need to be considered.

NURSE AIDE REGISTRY

Thomson Prometric, the entity that maintains the Nurse Aid Registry, maintains a website that provides instruction to potential nurse aides regarding the competency evaluation program. The site includes instruction regarding preparation for the CEP as well as a section which clearly documents the prohibition against charging nurse aides for training programs where they have employment or an offer of employment with a Federally certified nursing care facility. The site also includes information regarding the Nurse Aide Registry, including renewal procedures and requirements. Renewal documentation is sent to certified nurse aides on a biennial basis by Thomson Prometric. The nurse aides must return the renewal documentation along with a fee of \$20.00 within a specific time period to ensure their registry entries are renewed.

CMS reviewed the contract between the State of Michigan and Thompson Prometric and found that there were provisions in the contract that allowed Thomson Prometric to charge nurse aides a fee for registry document renewal. Regulations at 42 CFR Subpart D section 483.156 (b)(4) clearly indicate that the State may not impose registration related charges on individuals listed in the Nurse Aide Registry.

The purpose of the Nurse Aide Registry is to document specific information regarding the qualification of certified nurse aides within the State. 42 CFR 183.156 (c)(2) states "The registry must remove entries for individuals who have performed no nursing or nursing-related services for a period of 24 consecutive months, unless the individual's registry entry includes documented findings of abuse, neglect, or misappropriation of property." In performing a review of entries on the Nurse Aide Registry CMS staff noted that there are individuals included on the registry who have not performed services for a period in excess of 24 consecutive months.

Finding #4

The contract between the State of Michigan and Thomson Prometric contains language that is in violation of Federal requirements. The contract allows Thomson Prometric to charge renewal fees to nurse aides for continued placement on the Nurse Aide Registry.

Recommendation

We recommend that the contract between Thomson Prometric and the State of Michigan be amended to comply with applicable Federal requirements. The contract should include provisions that state that nurse aides working in federally authorized facilities are not to be charged renewal fees for continued placement on the Nurse Aide Registry.

DCH Response

The Department will take the necessary steps to ensure that nurse aides working in federally authorized facilities are not charged renewal fees for continued placement on the Nurse Aide Registry.

CMS Response

CMS finds the States response acceptable.

Finding #5

Nurse Aides who have not performed nursing or nursing related services for a period of 24 consecutive months are not being removed from the Nurse Aide Registry.

Recommendation

We recommend that procedures be implemented to ensure that the registry is kept current by removing individuals who have not performed nursing or nursing related services for a period of 24 consecutive months unless they have documented findings of abuse, neglect or misappropriation.

DCH Response

The Department disagrees with the recommendation but will work with the contractor to ensure that individuals who have performed no nursing or nursing related services for a period of 24 consecutive months; unless they have documented findings of abuse, neglect, or misappropriation are removed.

The Department believes that the registry clearly shows which certifications are currently active and which have lapsed for failure to meet the experience requirement within the last 24 months. Michigan employers want to know if individuals have ever been authorized to work as a nurse aide so we continued to keep prior records available.

CMS Response

CMS agrees that the registry does clearly show which certifications are currently active and which have lapsed. However, the Federal Register at 42 CFR 183.156 (c)(2) dictates that individuals who have not performed nursing or nursing-related services for a period of 24 consecutive months be removed from the registry unless the individual has documented findings of abuse, neglect, or misappropriation of property. CMS finds the States efforts to ensure the registry is updated to meet Federal requirements acceptable.